



State of New Jersey

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TO: County Agriculture Development Board Administrators
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FROM: Susan E. Craft

DATE: April 29, 2010

SUBJECT: Guidance Documents on Deed of Easement Interpretation:
Reports on General Guidance and Recreational Uses

As you know, the Deed of Easement Subcommittee (Subcommittee) has been examining various provisions of the Deed of Easement to determine where clarification may be needed to ensure consistent interpretation and related decision-making by the State Agriculture Development Committee (SADC) and its preservation partners.

This process is intended to clarify the SADC's interpretation of the Deed of Easement as it relates to the increasingly wide range of issues and landowner requests concerning permissible uses of preserved farmland. This process is not intended to and will not impose any new requirements on landowners.

The attached two reports – briefly summarized below – set forth guidance for how the SADC interprets the Deed of Easement in general, and specifically as it relates to recreational uses. The SADC accepted the reports from the Subcommittee at its meeting on April 23rd and directed that they be distributed to farmland preservation partners. **If you have any questions, comments or feel there are areas that need further clarification, please forward those questions or concerns to the SADC by May 28th.**

“Report No. 1: General Guidance” explains the foundation for the SADC's interpretation of the Deed of Easement. Interpretation of the Deed of Easement requires an understanding not only of its key provisions, but also of the statutes that created the Farmland Preservation Program, as well as the SADC and its authority. The first section of the report – “Statutes and Regulations Pertinent to Interpreting the SADC Deed of Easement” – summarizes the statutory references, rules and Deed of Easement provisions that are particularly relevant in addressing issues of interpretation.

The common direction provided by the implementing statutes, Deed of Easement and rules have been distilled into four key principles, which can be found on Page 6. The four principles, along with the summary of relevant statutes and regulations, reflect the foundation for the SADC's decision-making in issues pertaining to interpretation of the Deed of Easement. We believe they will be useful in clarifying for farmland preservation partners the key factors the SADC considers in determining permissibility of various activities under the Deed of Easement.

Report No. 2, "Recreational Uses on Preserved Farms," was developed in response to requests from a number of landowners seeking to conduct a wide range of recreational activities on preserved farmland. Guidance in this report reflects the statutorily-derived principle that agriculture must remain the first priority use of the land.

Further, the types of recreational uses specifically permitted under Paragraph 9 of the Deed of Easement – hunting, fishing, cross-county skiing and ecological tours – suggest that the Deed of Easement intends to permit only very passive uses that do not interfere with the use of the land for agriculture. While each case must be evaluated based on its own facts, generally the more intense the recreational use – in terms of frequency, duration, scale or impact on the land – the more likely the SADC is to view it as a violation of the Deed of Easement.

The report also discusses several examples of recreational activities in relation to their permissibility under the Deed of Easement, including agritourism. In summary, the SADC considers agritourism activities that are directly related to agricultural production, or associated with marketing of the agricultural output of the farm, as common farmsite activities that generally are permitted by the Deed of Easement provided that agricultural production remains the first priority use of the land.

The purpose of both reports is to help county agriculture development boards, nonprofits, landowners and other interests better understand what the SADC believes are the relevant considerations in determining allowable uses of preserved farmland.

Attachments